IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9182 of 2005
With
SPECIAL CIVIL APPLICATION No. 9143 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEETABEN WD/O.PANACHAND RAMJIBHAI & 3 - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :
MR AMIT V THAKKAR for Petitioner(s) : 1 - 4.
MR M R MENGADE AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2, 4,
MS TRUSHA K PATEL for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2005

COMMON ORAL JUDGMENT

1.Rule in both the petitions. Mr.M.R. Mengade, learned AGP waives service on behalf of the respondent Nos.1, 2 and 4 and Ms.Trusha K. Patel, learned advocate waives service of rule on behalf of the respondent No.3, in Special Civil Application No.9182 of 2005 and Mr.M.R. Mengade, learned AGP waives service of rule on behalf of the respondent Nos.1, 2 and 8 and Ms.Trusha K Patel, learned advocate waives service of rule on behalf of the respondent No.3, in Special Civil Application No.9143 of 2005.

2.At the request of the learned advocates appearing on behalf of the parties, the matter

is taken up for final hearing today.

3.In Special Civil Application No.9183 of 2005 under Articles 226 and 227 of the Constitution of India, the petitioners namely Geetaben wd/o.Panachand Ramjibhai and others have challenged the legality and validity of the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.84 of 2004 dtd.8/4/2005 in partly allowing the said revision application and quashing and setting aside the order passed by the Collector, Surat in RTS Appeal No.92 of 2003 dtd.30/7/2004 and order passed by the Deputy Collector, Olpad Prant, Surat in RTS Appeal No.52 of 2002 dtd.19/5/2003 with respect to the Mutation Entry No.4675 for the land bearing Block Nos.4, 13 and 246.

4.The land bearing Block Nos.4, 13 and 246,

situated at village Kathor, Taluka Kamrej, District ; Surat were originally owned and possessed by one Ramjibhai Fakirbhai who expired on 14/9/1969 and hence the name of Hansiben, widow of Ramjibhai Fakirbhai and Dayabhai Ramjibhai were mutated in the revenue record vide Mutation Entry No.1473 td.20/8/1971. That thereafter said Dayabhai expired and hence the names of legal heirs and representatives of Dayabhai Ramjibhai i.e. present petitioners were mutated in the revenue record vide Mutation Entry No.2539 dtd.13/6/1983.

5.It is the case of the petitioners that the name of Hansiben widow of Ramjibhai Fakirbhai came to be deleted from the revenue record vide Mutation Entry No.4675 dtd.1/5/2002 as she expired on 14/11/1987. It is the case of the petitioners that out of the land in question, the petitioner sold the land bearing Block

Nos.4 and 13 to Yunusbhai Yusufbhai Shaikh, Mohammed Yusuf Shaikh and Nazir Yusuf Shaikh by way of two different Sale-deeds dtd.24/6/2002, who have filed Special Civil Application No.9143 of 2005. That the name of said purchasers i.e. petitioners of Special Civil Application No.9143 of 2005 came to be mutated in the revenue record vide Mutation Entry Nos.4686 and 4687 dtd.24/6/2002. It appears that after the death of Hansiben, widow of Ramjibhai Fakirbhai, respondent No.3 herein – namely Natvarbhai Dayabhai Solanki made an application for mutation of his name in the revenue record for the land in question on the basis of Will said to have been executed by said Hansiben widow of Ramjibhai Fakirbhai, purported to be executed on 19/12/1985 and the entry was made vide Mutation Entry No.4677 dtd.25/2/2002. It appears that the said entry came to be cancelled by the Dy.Mamlatdar (Revenue), Kamrej vide order dtd.2/7/2002.

6.It appears that the respondent No.3 herein – Natvarbhai Dayabhai Solanki preferred RTS Appeal No.52 of 2002 before the Deputy Collector, Olpad Prant, Surat and the Dy.Collector vide its order dtd.19/5/2003 dismissed the said appeal and certified Mutation Entry No.4675 pursuant to which, the name of Hansiben was deleted.

7.Being aggrieved by the said order passed by the Dy.Collector, Olpad Prant, the respondent No.3 herein, Natvarbhai Dayabhai Solanki preferred an appeal before the Collector, Surat being RTS Appeal No.92 of 2003 and the Collector vide its judgment and order dtd.30/7/2004 dismissed the said appeal preferred by the respondent NO.3 and confirmed the order passed by the Dy.Collector in RTS Appeal NO.52 of 2002. Being aggrieved by the said order passed by the Collector, Surat dtd.30/7/2004 in RTS Appeal

No.92 of 2003, the respondent NO.3 preferred Revision Application NO.84 of 2004 before the Secretary (Appeals), Revenue Department, State of Gujarat and the the Secretary (Appeals), Revenue Department, State of Gujarat, vide its judgment and order dtd.8/4/2005 partly allowed the said revision application and quashed and set aside the order passed by the three authorities below and directed to mutate the name of the respondent No.3 – Natvarbhai Dayabhai Solanki in the record of rights on the basis of Will executed by Hansiben widow of Ramjibhai Fakirbhai.\

8.That being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.84 of 2004 dtd.8/4/2005, the petitioners have preferred Special Civil Application NO.9182 of 2005.

9.So far as Special Civil Application NO.9143 of 2005 is concerned, the same is filed by Yunusbhai Yusufbhai Shaikh and others who claim to have purchased the land bearing Block Nos.4 and 13 from the respondent Nos.4 to 7 of Special Civil Application Nos.9143 of 2005 who are the petitioners of Special Civil Application Nos.9182 of 2005, by two registered Sale-deeds dtd.24/6/2002, whose names came to be mutated in the record of rights vide Mutation Entry No.4686 and 4687, have challenged the judgement and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.84 of 2004 dtd.7-4—20005 / 8-4-2005, by which, the Secretary (Appeals), Revenue Department, State of Gujarat has also held and observed that on quashing and setting aside the Entry No.4675 with respect to the land bearing Block Nos.4 and 13, the entry in favour of the petitioners herein – purchasers be also treated as

cancelled.

10.Mr.Amit Thakkar, learned advocate appearing on behalf of the petitioners of Special Civil Application No.9182 of 2005 has vehemently submitted that on the death of Dayabhai, the name of the petitioners came to be mutated in the record of rights as the heirs and legal representative of Dayabhai Ramjibhai vide Mutation Entry No.2539 dtd.13/6/1983 and the said entry is not challenged and when the Hansiben, widow of Ramjibhai Fakirbhai has expired in the year 1917, her name was rightly deleted from the revenue record vide Mutation Entry No.4675, which was not required to be interfered with by the Secretary (Appeals), Revenue Department, State of Gujarat. He has also further submitted that when the Block Nos.4 and 13 are already sold by way of registered Sale-deeds to the petitioners of Special Civil Application No.9143 of 2005 and

necessary entries mutating the name of the purchasers came to be entered into vide Mutation Entry Nos.4686 and 4687 on 24/6/2002, the Secretary (Appeals), Revenue Department, State of Gujarat ought not to have quashed and set aside the Mutation Entry No.4675 dtd.1/5/2002 by which the name of Hansiben was deleted. It is also further submitted that the Secretary (Appeals), Revenue Department, State of Gujarat ought not to have directed to mutate the name of respondent No.3 of Special Civil Application No.9182 of 2005 named Natvarlal Dayabhai Solanki on the basis of so-called Will alleged to have been executed by Hansiben dtd.19/12/1985, when nothing was done by said Natvarlal to mutate his name on the basis of Will alleged to have been executed by Hansiben widow of Ramjibhai Fakirbhai, when she has expired in 1987 and for the first time, an application was made by said Natvarlal to mutate his name in the revenue record on the

basis of so-called Will alleged to have been executed by Hansiben. Therefore, it is requested to quash and set aside the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, by which the name of said Natvarbhai Dayabhai Solanki is directed to be mutated in the revenue record.

11.Mr.Mrugen Purohit, learned advocate appearing on behalf of the petitioners of Special Civil Application No.9143 of 2005 – purchasers of Block Nos.4 and 13 in whose favour Mutation Entry Nos.4686 and 4687 dtd.24/6/2002 are made, has vehemently submitted that as the petitioners were not party before the Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No.84 of 2004 and when the petitioners are purchasers of the land in question by registered Sale-deed, the Secretary (Appeals), Revenue Department, State of Gujarat, could not have cancelled the entry

which were in favour of the petitioners – purchasers, more particularly when no opportunity of being heard was afforded to the petitioner. Therefore, it is requested to allow the present petition quashing and setting aside the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.84 of 2004 dtd.8/4/2005, so far as it relates to cancellation of Mutation Entries in favour of the petitioners – purchasers.

12.Ms.Trusha K. Patel, learned advocate appears on behalf of the respondent No.3 - Natvrbhai Dayabhai Solanki. The said respondent has also filed Affidavit-in-reply. It is submitted by her that the land bearing Block Nos.4, 13 and 246, situated at village Kathor, Taluka Kamrej, District ; Surat, were originally owned and possessed by one Ramjibhai Fakirbhai and after his death, the name of Hansiben widow of

Ramjibhai Fakirbhai and Dayabhai Ramjibhai were mutated in the revenue record as co-owners. Hansiben widow of Ramjibhai Fakirbhai expired on 14/11/1987 and before she expired, she executed a Will in favour of respondent No.3 – Natvarbhai Dayabhai Patel on 19/2/1985 and therefore, the petitioners of Special Civil Application No.9182 of 2005 could not have sold the land bearing Block Nos.4 and 13 to the petitioners of Special Civil Application No.9143 of 2005. She has also further submitted that on the basis of Will executed by Hansiben widow of Ramjibhai Fakirbhai dtd.19/12/1985, entry in favour of Natvarbhai was already made and the Secretary (Appeals) has rightly passed the order directing to mutate the name of Natvarbhai in the revenue record on the basis of the aforesaid Will. It is also further submitted that inspite of the fact that the petitioners of Special Civil Application No.9182 of 2005 were aware of the Will

dtd.19/12/1985, they have never challenged the Will which was a registered Will. She has further submitted in fact, Regular Civil Suit No.23 of 1983 was filed by the petitioners of Special Civil Application No.9182 of 2005 in the court of learned Civil Judge (JD), Kathor and in the said suit, an application was submitted by the learned advocate appearing on behalf of Hansiben widow of Ramjibhai Fakirbhai on 25/11/1987, informing the concerned Civil Court that during the pendency of the said Civil Suit, the defendant Hansiben has expired on 14/11/1987 and that she has executed a Will on 16/12/1985 which is registered on 19/12/1985 and on the basis of the said Will, Natvarbhai Dayabhai Solanki has become the owner of the land in question and on the said application, the learned advocate appearing on behalf of the original plaintiff i.e. the petitioners of Special Civil Application No.9182 of 2005 has made an endorsement that

they do not want to file any reply and therefore, the said suit came to be disposed of as abated by the learned Civil Judge (JD), Kathor vide order dtd.4/8/1989. Therefore, it is submitted that when the petitioners of Special Civil Application No.9182 of 2005 were aware of the Will dtd.16/2/1985 registered on 19/2/1985, the same has not been challenged by the petitioners till today and therefore, the Secretary (Apeals), Revenue Department, State of Gujarat has rightly passed the order directing to mutate the name of Narvarbhai Dayabhai Solanki in the revenue record on the basis of registered Will executed by Hansiben, widow of Ramjibhai Fakirbhai. Therefore, it is requested to dismiss the present petition. It is further submitted that the sale in favour the petitioners of Special Civil Application No.9143 of 2005 is executed with malafide intention to defeat the rights of the respondent No.3 – Natvarbhai Dayabhai Solanki,

as chronological events which will be stated hereinafer will go to show that the actions of the petitioners of SCA No.9182 of 2005 and the petitioners of SCA No.9143 of 2005 is not bonafide. It is submitted that the said respondent No.3 – Natvarbhai Dayabhai Solanki, made an application for mutating his name in the revenue record on the basis of registered sale deed dtd.19/12/1985 on 25/2/2005 and necessary entry was made and the name of said Natvarbhai came to be mutated in the revenue record vide Mutation Entry No.4677 dtd.25/2/2005. It is also further submitted that having come to know about the said Entry No.4677 dtd.25/2/2005, immediately thereafter the petitioners of Special Civil Application No.9182 of 2005, managed to get the name of Hansiben widow of Ramjibhai Fakirbhai, deleted from the revenue record vide Mutation Entry No.4675 dtd.1/5/2002. It is also further submitted that immediately thereafter, the

petitioners of Special Civil Application NO.9182 of 2005 have sold the land bearing Block Nos.4 and 13 to the petitioners of Special Civil Application No.9143 of 2005 vide registered sale deed dtd.24/6/2002 and their names entered into the record of rights being Entry No.4686 and 4687 dtd.24/6/2002. Therefore, it is submitted that the aforesaid action on the part of the petitioners of Special Civil Application No.9182 of 2005 to get the name of Hansiben widow of Ramjibhai Fakirbhai deleted on 1/5/2002 vide Entry No.4675 and to sell the land in question being Block Nos.4 and 13 to the petitioners of Special Civil Application No.9143 of 2005 on 24/6/2002 are only after the name of Natvarbhai came to be mutated in the revenue record vide Mutation Entry No.4677 dtd.25/2/2002. Therefore, it is requested to dismiss both the petitions.

13.Heard the learned advocates appearing on behalf of the parties.

14.Having heard the learned advocates appearing on behalf of the respective parties and considering the material on record, at the out set it is required to be noted that this proceedings has arisen out of the RTS proceedings with regard to the Mutation Entry in the revenue record. As held by the Hon'ble Supreme Court as well as by this Court in the catena of judgments, Mutation Entry in the revenue record does not confer any right, title or interest in favour of the person in whose favour the entry is made and the same is only for fiscal purpose and for the purpose of collection of revenue. In this back ground, it it is to be appreciated that the respondent No.3 Natvarbhai Dayabhai Solanki claims to be the owner on the basis of registered Will dtd.19/12/1985 executed by Hansiben widow of

Ramjibhai Fakirbhai and he wants his name to be mutated in the record of rights on the basis of the said registered will. It is also required to be noted that though the petitioners of SCA No.9182 of 2005 were aware of the registered Will dtd.19/2/1985 since 1987 i.e. the day on which it was declared in Regular Civil Suit No.23 of 1983 before the learned Civil Judge (JD), Kathor, still, the said Will has not been challenged by the petitioners of Special Civil application No.9182 of 2005. It appears from the above chronological events that said Natvarbhai Dayabhai Solanki – respondent No.3 submitted an application for mutating his name in the revenue record with regard to the land in question pursuant to the Will executed by Hansiben widow of Ramjibhai Fakirbhai on 19/12/2985 in the year 2002, more particularly on 25/2/2002 and the entry in his favour was made vide Mutation Entry No.4677 dtd.25/2/2002 and only thereafter the petitioners of Special

Civil Application No.9182 of 2005 initiated proceedings. Firstly, having come to know about the mutation of the Entry No.4677 dtd.25/2/2002 in favour of the respondent No.3, they have got the name of Hansiben deleted vide Mutation Entry No.4675 dtd.1/5/2002 and thereafter, they have sold the Block Nos.4 and 13 to the petitioners of Special Civil Application No.9143 of 2005 and necessary entries were mutated in the record of rights vide Mutation Entry Nos.4686 and 4687 dtd.24/6/2002, by which the name of petitioners of Special Civil Application Nos.9143 of 2005 were mutated in the revenue record on the basis of the registered sale deed dtd.24/6/2002 in view of the fact that the said sale deeds are not challenged, this Court is not commenting upon the same. Considering the registered Will executed by Hansiben widow of Ramjibhai Fakirbhai dtd.19/12/1985, if the names of the respondent No.3 is directed to be mutated in

the revenue record, it cannot be said that there is any illegality committed by the Secretary (Appeals), Revenue Department, State of Gujarat as the effect of the registered Will is required to be given in the revenue record, more particularly in view of the fact that the said Will has not been challenged by anybody till today. On the other hand, it is also to be noted that the petitioners of Special Civil Application No.9143 of 2005 – purchasers, claim to be the owners pursuant to the registered sale deed dtd.24/6/2002 which are also not challenged by the respondent No.3 till today and therefore, the effect of the registered sale deed is also required to be given in the revenue record. In view of the fact that now the dispute is with regard to the title, the parties are required to be relegated to the Civil Court. However, as stated hereinabove, the effect of the registered Will in favour of the said respondent no.3 –

Natvarbhai Dayabhai Solanki as well as the effect of the registered sale deed in favour of the petitioners of Special Civil Application No.9143 of 2005 namely Yunus Yusuf Shaikh and others are required to be given in the revenue record. Under the circumstances, the Mutation Entry N.4677 in favour of the said respondent No.3 – Natvarbhai Dayabhai Solanki, Mutation Entry Nos.4686 and 4687 in favour of the petitioners of Special Civil Application No.9143 namely Yunus Yusuf Shaikh and others are required to be restored and the names of the said respondent No.3 namely Natvarbhai Dayabhai Solanki as well as names of the petitioners of SCA No.9143 of 2005 are required to be mutated in the revenue record with regard to the land bearing Block Nos.4 and 13 as well the name of respondent NO.3 – Natvarbhai Dayabhai Solanki is required to be mutated in the revenue record with regard to the land bearing Block No.4, 13 and 246,

relegating the parties to approach the competent Civil Court for establishing their rights, if the same are disputed and/or challenging the registered Will dtd.19/12/1985 executed by Hansiben widow of Ramjibhai Fakirbhai and/or challenging the registered sale deed dtd.24/6/2002 executed in favour of the petitioners of Special Civil Application No.9143 of 2005 and the Talati-cum-Mantri and the Mamlatdar are hereby directed to place an additional entry in the revenue record with regard to the land bearing Block Nos.4, 13 and 246 to the effect that the said entries are disputed entries and the same shall be subject to the final outcome of the civil suits that may be filed by the parties either challenging the registered Will dtd.19/12/1985 executed by Hansiben widow of Ramjibhai Fakirbhai in favour of the respondent No.3 – Natvarbhai Dayabhai Solanki and/or challenging the registered sale deeds dtd.24/6/2002 in favour

of the petitioners of Special Civil Application No.9143 of 2002.

15.With the above observations and directions, the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.84 of 2004 dtd.8/4/2005 is modified to the aforesaid extent. Both the petitions stand disposed of accordingly with the aforesaid directions. However, there will be no order as to costs.

(M.R.SHAH, J.)

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